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BEFORE THE

Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20554

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To: The Commission

**REPLY COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute (“API”), by its attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission (“Commission” or “FCC”), respectfully submits the following Reply Comments regarding selected Comments filed in this matter in response to the *Notice of Proposed Rule Making* (“Notice”) that initiated this proceeding.^{1/}

^{1/} 63 Fed. Reg. 65568 (November 27, 1998). The time for filing these Reply Comments was extended to February 3, 1999 by Order of the Acting Chief, Public Safety and Private Wireless Division (DA 98-2651).

I. PRELIMINARY STATEMENT

1. API, a national trade association representing the interests of the petroleum and natural gas industries, filed Comments in this proceeding concerning issues of particular importance to mobile radio licensees in these industries. API members rely on Part 90 frequency assignments to meet essential internal communications needs, including voice and telemetry communications used to support oil and gas exploration, development, production and delivery. Safe and efficient operation of these systems is vital to protect the public, employees, the environment and critical national infrastructure.

2. API's Comments supported adoption of many of the Commission's proposed rule changes that will benefit applicants and licensees, including uniform construction periods and numerous rule clarifications. However, API opposed, and continues to oppose, several changes that will have a negative impact on Private Land Mobile Radio Service licensees. These include extending the license term to ten years, allowing unlimited sharing of systems with public safety and federal governmental entities, eliminating the licensing requirement for additional frequency assignments, and adopting new out-of-channel emission standards.

II. REPLY COMMENTS

A. The Term of Private Land Mobile Radio Services Licenses Should Remain Five Years

3. API opposes adoption of the Commission's proposal to extend the license term for Private Land Mobile Radio Service ("PLMRS") authorizations from the present five-year term to ten years. Numerous commenters supported the rule change because it will reduce licensing costs, whereas APCO and API both recognized the need to retain the present rule which tends to increase spectrum availability.^{2/} While API certainly supports actions that lower licensing costs, this benefit is outweighed in this instance by the advantages of the current five-year rule, which effectively clears valuable, unused spectrum in a timely manner by necessitating a rolling review of the license data base. When licensees do not respond to a notice of license expiration, the Commission is permitted to purge the expired authority and thereby pave the way for actual use of the formerly licensed spectrum by another party.

4. Although PCIA supported a change to ten years, this endorsement was conditioned on the Commission rigorously enforcing rules on notification for completion

^{2/} Comments of API at p. 3-4; Comments of the Association of Public-Safety Communications Officials-International, Inc. ("APCO").

of construction and station closure.^{3/} API agrees with PCIA that increased enforcement would have a positive result with regard to maintaining an accurate data base, but it is doubtful the Commission has the resources to devote to such an increased enforcement effort. Therefore, API reiterates its support for retaining the current five-year rule as a cost-effective means of maintaining an accurate license data base.

B. The Rules Should Not Be Amended to Permit Unfettered System Sharing by Industrial/Business Pool Licensees with Public Safety and Federal Entities

5. API recommends the Commission retain the present § 90.421, which allows sharing of Industrial/Business Pool ("I/B Pool") frequencies with public safety entities and the Federal government only in an emergency. Although many commenters supported the Commission's proposal to allow sharing for day-to-day operations, API believes this is an unnecessary and unwise proposition. The already congested I/B Pool bands could become even more congested, thereby reducing the ability of eligibles to obtain uncluttered frequency assignments needed to conduct safe and efficient operations. As the Commission is aware, public safety entities were recently allocated spectrum in the 700 MHz band, which will allow sharing between public safety/governmental entities and

^{3/} Comments of the Personal Communications Industry Association, Inc. ("PCIA") at p. 4-5.

non-governmental entities.^{4/} API submits that it would be more appropriate to authorize shared system use in the new bands, rather than placing additional burdens on already congested bands addressed in this proceeding.

C. Additional VHF Low Power Channels Should Not Be Reallocated to A Non-Licensed Service

6. In response to the Commission's invitation for comments on whether there are other frequencies in Part 90 for which the FCC could eliminate the licensing requirement,^{5/} Tandy Corporation ("Tandy") filed comments suggesting four additional VHF frequencies.^{6/} Three of the frequencies suggested by Tandy (151.625 MHz, 151.700 MHz and 151.760 MHz) are dedicated for itinerant use, and the fourth, 151.955 MHz, has no limitations on use.^{7/} The rationale the Commission used in the Notice to justify eliminating the licensing requirement for the designated VHF channels was that "These five frequencies are licensed as *mobile* frequencies and the station license, therefore, does

^{4/} *First Report and Order and Third Notice of Proposed Rule Making, The Development of Operational, Technical And Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through The Year 2010*, WT Docket No. 96-86.

^{5/} Notice at ¶ 32.

^{6/} Comments of Tandy Corporation.

^{7/} 47 C.F.R. § 90.35.

not contain station coordinates." (emphasis added)^{8/} However, since the additional four frequencies suggested by Tandy are classified as "Base or Mobile", this rationale does not necessarily apply. These channels have been available for itinerant use for many years in the former Business Radio Service, and API therefore suggests that there is a strong possibility that there are numerous authorized users who employ mobile units and base stations at temporary locations. Transferring these channels to an unlicensed service can be expected to increase their use for recreational purposes to the detriment of industrial and business licensees. Therefore, API strongly urges that the licensing requirements for these frequencies remain in Part 90.

D. The Proposal to Change the Emission Mask Provisions for Part 90 Frequency Bands Should Be Studied Further

7. In its Comments, API raised concerns about Motorola's proposal to adopt Adjacent Channel Coupled Power ("ACCP") an alternative approach to using emission masks. Since Motorola has now concluded "that it may be premature" to adopt ACCP for all Part 90 frequency bands,^{9/} API suggests the Commission defer any decision on this matter in this proceeding and seek further comment on this issue.

^{8/} Notice at ¶ 32.

^{9/} Comments of Motorola, Inc. at p. 14.

III. CONCLUSION

8. API supports adoption of the several rule changes proposed in this proceeding that will benefit applicants and licensees, as discussed in its Comments. However, API urges the Commission to forego changing the license term, expanding I/B Pool sharing, eliminating licensing requirements for any additional channels, and adopting new out-of-channel emission standards.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully urges the Federal Communications Commission to act in a manner fully consistent with the views expressed herein.

Respectfully submitted,

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